



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 203732

PRELIMINARY RECITALS

Pursuant to a petition filed on November 16, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services (the agency) regarding Medical Assistance (MA), a hearing was held on December 16, 2021, by telephone.

The issue for determination is whether the agency has established an MA overpayment against the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], ESS and Overpayment Specialist
Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County and has been a recipient of MA.
2. On October 3, 2016 petitioner applied for MA.

3. On October 4, 2016 the agency issued a notice to petitioner advising him that he was enrolled in MA effective October 1, 2016, and that he needed to report if his gross monthly income went over \$990.
4. Petitioner's wages rose above \$990 in January 2017 but he did not report it. His income remained over the limit through December 31, 2017.
5. On August 11, 2017, the agency received a state wage match discrepancy regarding petitioner. The agency requested verification of petitioner's wages but nothing was received.
6. Petitioner's annual income in 2017 was \$25,684.11 as shown by the state wage record.
7. On October 1, 2021, the agency issued a notice of MA overpayment to petitioner advising him that he had an overpayment for the period of March 2017 – December 2017 in the amount of \$2530.16 due to client error in failing to report accurate information for benefits.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also *BadgerCare Plus Eligibility Handbook*, §28.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The income limit for BadgerCare Plus (BC+) is 100% of the Federal Poverty Level (FPL), which, for a 1-person household was \$990 in January 2017. See Wis. Stat., §49.471(4)(a)4.b for the law, and the *BC+ Handbook*, §50.1 (Release 16-01) for the limit at the time of petitioner's eligibility.

BC+ recipients are required to report if income in a month rises above the 100% FPL level. *BC+ Handbook*, §27.3. The report must be made by the tenth of the next month, and BC+ eligibility will be adjusted the following month if income remains above the limit.

When calculating the amount of an MA overpayment, the agency is directed to use the actual income that was reported or required to be reported in determining if an overpayment has occurred. The amount of the recovery may not exceed the amount of the BC+ benefits that were provided incorrectly. See *BC+ Handbook*, §28.4.2. In this case, the state paid MA claims and monthly capitation fees for petitioner to

maintain his BC+ as evidenced by the Total Benefits Paid by Medicaid Report. This is what the agency seeks to recover.

The MA recovery statute clearly provides for recovery of MA when a recipient or representative fails to report income which would affect eligibility. The failure does not have to be intentional. The agency did not suggest that it was making a fraud case here. Even an honest mistake of failing to report income is subject to the recovery rights for the agency.

Additionally, the agency has published Operations Memo 17-35, which provides:

CONSIDERING GAP FILLING ELIGIBILITY WHEN DETERMINING OVERPAYMENTS FOR HEALTH CARE

When reviewing a case for any potential overpayments for health care, IM agencies must assess whether the person could have been eligible in any other category of Medicaid before issuing an overpayment. Since gap filling is considered a category of Medicaid, agencies must assess whether the person could have been eligible under gap filling rules during the overpayment period. If the person could have been eligible under gap filling rules for the overpayment period, he or she should not be subject to an overpayment.

Example 6: Mason became eligible for BadgerCare Plus as a childless adult in January 2017 and had no countable income. When he completed his renewal in December 2017, Mason reported he started working in September. Verification shows that he works 30 hours per week and earns \$10.00 per hour, so his counted income is \$1,200 per month. Although Mason exceeded his reporting limit of \$1,005 per month, the worker must look at what would have happened had he reported the change timely when the worker determines if an overpayment has occurred.

The worker finds that if he had reported the change timely, Mason would have been over income based on his monthly income. However, Mason would have been eligible under gap filling rules based on his annual income of \$4,800 (\$1,200 per month from September to December), so there is no overpayment.

The agency performed both functions here, using actual and annualized income, and found petitioner still remained over the income limit. The annual limit in 2017 was \$12,060 for a household of one. *BC+ Handbook*, §50.1 (Release 17-01).

Petitioner did not identify errors in the calculations of household income. Rather, he testified to the confusion with having MA in the first place. The agency presented the notices issued to petitioner advising him of his eligibility, reporting requirements, and the application for the MA made by petitioner. The documents provided by the agency for hearing support the overpayment for the time periods in question. I find that the agency has met its burden to show it correctly established the overpayment. I therefore add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The law and policy are clear that these are recoverable overpayments. In other words, I cannot change the outcome were I think it to be unfair. The petitioner may wish to contact the Public Assistance Collection Unit to see if a reasonable repayment arrangement can be made so as to avoid any tax intercepts.

CONCLUSIONS OF LAW

The agency has established an MA overpayment against the petitioner for the period of March 2017 – December 2017 in the amount of \$2530.16 due to client error in failing to report accurate information for benefits

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.
8.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

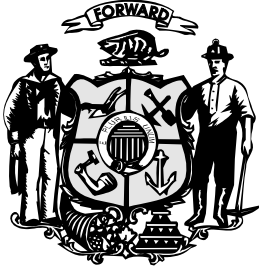
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of January, 2022

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 24, 2022.

Sheboygan County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability